

AMENDED IN ASSEMBLY APRIL 12, 2005

CALIFORNIA LEGISLATURE—2005–06 REGULAR SESSION

ASSEMBLY BILL

No. 581

Introduced by Assembly Member Klehs

February 16, 2005

An act to amend Section ~~1964~~ of 7110.5 of the *Business and Professions Code*, and to amend Sections 1771.2 and 1776 of, and to add Section 1726.5 to, the *Labor Code*, relating to ~~firefighters~~ public works.

LEGISLATIVE COUNSEL'S DIGEST

AB 581, as amended, Klehs. ~~Firefighters~~ *Public works: wages.*

Existing law generally requires contractors engaged in public works to pay employees the prevailing wage, as determined by the Director of Industrial Relations, and to comply with specified provisions of the Labor Code. Under current law, the registrar initiates formal disciplinary proceedings against a contractor upon receipt of a certified copy of the Labor Commissioner's finding of a willful or deliberate violation of the Labor Code.

This bill would eliminate the requirement for the preparation of a certified copy of a finding and would instead provide for the initiation of formal disciplinary proceedings upon the Labor Commissioner's finding of a violation of the Labor Code.

Existing law requires each contractor and subcontractor on a public works project to keep accurate payroll records that may be accessed by the public through the awarding body or state agencies, as specified. Existing law provides that if the payroll records are provided to a joint labor-management committee established pursuant to a specified provision of federal law, employee names and social security numbers are obliterated.

This bill would provide for obliteration for an individual's social security number only. This bill would also make technical changes to the provisions regarding public disclosure of payroll records.

Existing law authorizes a joint labor-management committee to bring an action against any employer who fails to comply with specified provisions of the Labor Code.

This bill would provide that a joint labor-management committee may bring an action within 4 years of a violation. This bill would provide that if the court finds a violation, the violation shall be enjoined, restitution shall be awarded for distribution of employee wages, and the committee shall be awarded attorney's fees, costs, and expenses.

Additionally, this bill would require the awarding body to report to the Contractors' State License Board the name, license number, location, and identification number of the public works project for all contractors and subcontractors performing public works for, or on the behalf of, the awarding body and would require the Contractors' State License Board to publish that information online.

~~Existing law authorizes the governing body of any regularly organized volunteer fire department to adopt regulations governing the removal of volunteer firefighters from the volunteer fire department. Existing law provides that the governing body has the discretion, after soliciting comments from the membership of the volunteer fire department, to adopt reasonable regulations that may include specified elements.~~

~~This bill would make technical, nonsubstantive changes to these provisions.~~

Vote: majority. Appropriation: no. Fiscal committee: ~~no~~ yes.
State-mandated local program: no.

The people of the State of California do enact as follows:

1 ~~SECTION 1. Section 1964 of the Labor Code is amended to~~
2 ~~read:~~

3 ~~SECTION 1. Section 7110.5 of the Business and Professions~~
4 ~~Code is amended to read:~~

5 ~~7110.5. (a) A licensee's failure to pay wages as required by~~
6 ~~the Labor Code is a cause for disciplinary action. Upon receipt~~
7 ~~of a certified copy of the Labor Commissioner's finding of a~~
8 ~~willful or deliberate violation of the Labor Code by a licensee,~~

1 ~~pursuant to Section 98.9 of the Labor Code~~, the registrar shall
2 initiate formal disciplinary action against ~~such~~ *that* licensee
3 within 30 days of notification.

4 *(b) A finding of a violation of the Labor Code by the Labor*
5 *Commissioner is not a prerequisite to disciplinary action under*
6 *this article.*

7 SEC. 2. Section 1726.5 is added to the Labor Code, to read:

8 1726.5. The body awarding the contract for a public work
9 shall report to the Contractors' State License Board the name
10 and license number of each contractor and subcontractor
11 performing the public work and the name, location, and
12 identification number of the public works project for which the
13 contract is awarded. The awarding body shall report to the
14 Contractors' State License Board within 30 days of the time this
15 information becomes available to the awarding body. The
16 Contractors' State License Board shall include this information
17 on the board's Web site relating to licensed contractors.

18 SEC. 3. Section 1771.2 of the Labor Code is amended to
19 read:

20 1771.2. A joint labor-management committee established
21 pursuant to the federal Labor Management Cooperation Act of
22 1978 (Section 175a of Title 29 of the United States Code) may
23 bring an action in any court of competent jurisdiction against an
24 employer ~~that fails to pay the prevailing wage to its employees,~~
25 ~~as required by this article. This action shall be commenced not~~
26 ~~later than 180 days after the filing of a valid notice of completion~~
27 ~~in the office of the county recorder in each county in which the~~
28 ~~public work or some part thereof was performed, or not later than~~
29 ~~180 days after acceptance of the public work, whichever last~~
30 ~~occurs who fails to comply with Chapter 1 (commencing with~~
31 ~~Section 1720) of Part 7 of Division 2 not later than four years~~
32 ~~from the violation. If the court finds a violation of this chapter, it~~
33 ~~shall enjoin the violation, award restitution for distribution to~~
34 ~~employees for unpaid wages, and award the joint~~
35 ~~labor-management committee reasonable attorney's fees, costs,~~
36 ~~and expenses incurred in maintaining the action. An action under~~
37 ~~this section may not be based on an employer's misclassification~~
38 ~~of the craft of a worker on its certified payroll records, if the~~
39 ~~misclassification is, or has been, adjusted pursuant to the~~
40 ~~National Labor Relations Act (Section 160k of Title 29 of the~~

1 *United States Code*). Nothing in this section limits any other
2 *available remedies for a violation of this chapter.*

3 *SEC. 4. Section 1776 of the Labor Code is amended to read:*

4 1776. (a) Each contractor and subcontractor shall keep
5 accurate payroll records, showing the name, address, social
6 security number, work classification, straight time and overtime
7 hours worked each day and week, and the actual per diem wages
8 paid to each journeyman, apprentice, worker, or other employee
9 employed by him or her in connection with the public work.
10 Each payroll record shall contain or be verified by a written
11 declaration that it is made under penalty of perjury, stating both
12 of the following:

13 (1) The information contained in the payroll record is true and
14 correct.

15 (2) The employer has complied with the requirements of
16 Sections 1771, 1811, and 1815 for any work performed by his or
17 her employees on the public works project.

18 (b) (1) The payroll records enumerated under subdivision (a)
19 shall be certified and shall be available for inspection at all
20 reasonable hours at the principal office of the contractor on the
21 following basis:

22 ~~(1)–~~

23 (A) A certified copy of an employee's payroll record shall be
24 made available for inspection or furnished to the employee or his
25 or her authorized representative on request.

26 ~~(2)–~~

27 (B) A certified copy of all payroll records enumerated in
28 subdivision (a) shall be made available for inspection or
29 furnished upon request to a representative of the body awarding
30 the contract, the Division of Labor Standards Enforcement, and
31 the Division of Apprenticeship Standards of the Department of
32 Industrial Relations.

33 ~~(3)–~~

34 (C) A certified copy of all payroll records enumerated in
35 subdivision (a) shall be made available upon request by the
36 public for inspection or for copies thereof. ~~However, a request~~
37 ~~by the public shall be made through either the body awarding the~~
38 ~~contract, the Division of Apprenticeship Standards, or the~~
39 ~~Division of Labor Standards Enforcement, or directly to the~~
40 ~~contractor or subcontractor whose payroll records are~~

~~requested. If the requested payroll records have not been provided pursuant to paragraph (2), the The requesting party shall, prior to being provided the records, reimburse the costs of preparation by the contractor, subcontractors, and the entity through which the request was made contractor's or subcontractor's costs of copying the payroll records. The public may not be given access to the records at the principal office of the contractor.~~

(2) This section shall not be construed to require that members of the general public be given access to the records maintained at the principal office of the contractor.

(c) The certified payroll records shall be on forms provided by the Division of Labor Standards Enforcement or shall contain the same information as the forms provided by the division.

(d) A contractor or subcontractor shall file a certified copy of the records enumerated in subdivision (a) with the entity that requested the records within 10 days after receipt of a written request.

(e) Any copy of records made available for inspection as copies and furnished upon request to the public or any public agency by the awarding body, the Division of Apprenticeship Standards, or the Division of Labor Standards Enforcement shall be marked or obliterated to prevent disclosure of an individual's name, address, and social security number. The name and address of the contractor awarded the contract or the subcontractor performing the contract shall not be marked or obliterated. Any copy of records made available for inspection by, or furnished to, a joint labor-management committee established pursuant to the federal Labor Management Cooperation Act of 1978 (29 U.S.C. Sec. 175a) shall be marked or obliterated only to prevent disclosure of an individual's name and social security number. ~~A joint labor management committee may maintain an action in a court of competent jurisdiction against an employer who fails to comply with Section 1774. The court may award restitution to an employee for unpaid wages and may award the joint labor management committee reasonable attorney's fees and costs incurred in maintaining the action. An action under this subdivision may not be based on the employer's misclassification of the craft of a worker on its certified payroll~~

1 ~~records. Nothing in this subdivision limits any other available~~
2 ~~remedies for a violation of this chapter.~~

3 (f) The contractor shall inform the body awarding the contract
4 of the location of the records enumerated under subdivision (a),
5 including the street address, city, and county, and shall, within
6 five working days, provide a notice of a change of location and
7 address.

8 (g) The contractor or subcontractor has 10 days in which to
9 comply subsequent to receipt of a written notice requesting the
10 records enumerated in subdivision (a). In the event that the
11 contractor or subcontractor fails to comply within the 10-day
12 period, he or she shall, as a penalty to the state or political
13 subdivision on whose behalf the contract is made or awarded,
14 forfeit twenty-five dollars (\$25) for each calendar day, or portion
15 thereof, for each worker, until strict compliance is effectuated.
16 Upon the request of the Division of Apprenticeship Standards or
17 the Division of Labor Standards Enforcement, these penalties
18 shall be withheld from progress payments then due. A contractor
19 is not subject to a penalty assessment pursuant to this section due
20 to the failure of a subcontractor to comply with this section.

21 (h) The body awarding the contract shall cause to be inserted
22 in the contract stipulations to effectuate this section.

23 (i) The director shall adopt rules consistent with the California
24 Public Records Act (Chapter 3.5 (commencing with Section
25 6250) of Division 7 of Title 1 of the Government Code) and the
26 Information Practices Act of 1977 (Title 1.8 (commencing with
27 Section 1798) of Part 4 of Division 3 of the Civil Code)
28 governing the release of these records, including the
29 establishment of reasonable fees to be charged for reproducing
30 copies of records required by this section.

31 ~~1964. (a) The governing body of any regularly organized~~
32 ~~volunteer fire department may, but shall not be required to, adopt~~
33 ~~regulations governing the removal of volunteer firefighters from~~
34 ~~the volunteer fire department.~~

35 ~~(b) If the governing body chooses to adopt these regulations, it~~
36 ~~may, after soliciting comments from the membership of the~~
37 ~~volunteer fire department, adopt any reasonable regulations that~~
38 ~~may, but need not, include some or all of the following elements,~~
39 ~~in addition to other provisions:~~

1 ~~(1) Members of the department shall not be removed from~~
2 ~~membership, except for incompetence, misconduct, or failure to~~
3 ~~comply with the rules and regulations of the department.~~
4 ~~Removals, except for absenteeism at fires or meetings, shall be~~
5 ~~made only after a hearing with due notice, with stated charges,~~
6 ~~and with the right of the member to a review.~~

7 ~~(2) The charges shall be in writing and may be made by the~~
8 ~~governing body. The burden of proving incompetency or~~
9 ~~misconduct shall be on the person alleging it.~~

10 ~~(3) Hearings on the charges shall be held by the officer or~~
11 ~~body having the power to remove the person, or by a deputy or~~
12 ~~employee of the officer or body designated in writing.~~

13 ~~In case a deputy or other employee is so designated, he or she~~
14 ~~shall for the purpose of the hearing be vested with all the powers~~
15 ~~of the officer or body and shall make a record of the hearing,~~
16 ~~which shall be referred to the officer or body for review with his~~
17 ~~or her recommendations.~~

18 ~~(4) The notice of the hearing shall specify the time and place~~
19 ~~of the hearing and state the body or person before whom the~~
20 ~~hearing will be held. Notice and a copy of the charges shall be~~
21 ~~served personally upon the accused member at least 10 days but~~
22 ~~not more than 30 days before the date of the hearing.~~

23 ~~(5) A stenographer may be employed for the purpose of taking~~
24 ~~testimony at the hearing.~~

25 ~~(6) The officer or body having the power to remove the person~~
26 ~~may suspend the person after charges are filed and pending~~
27 ~~disposition of the charges, and after the hearing may remove the~~
28 ~~person or may suspend him or her for a period of time not to~~
29 ~~exceed one year.~~

30 ~~(7) Volunteer firefighters shall serve a probationary period of~~
31 ~~a length to be specified by the governing board, not to exceed~~
32 ~~one year. A probationary volunteer firefighter may be removed~~
33 ~~from membership without specification of cause. The decision to~~
34 ~~remove a probationer shall not require notice or a hearing.~~

35 ~~(e) The requirement of subdivision (b) to solicit comments~~
36 ~~from the membership shall not be deemed to create a duty to~~
37 ~~meet and confer with the membership.~~

38 ~~(d) In the event that a governing body of a regularly organized~~
39 ~~volunteer fire department adopts regulations governing removal~~
40 ~~of volunteer firefighters, the regulations shall not be interpreted~~

1 ~~as creating a property right in the volunteer firefighter job or~~
2 ~~position.~~
3 ~~(e) When regulations have been adopted and where the~~
4 ~~regulations provide for a hearing and decision by the governing~~
5 ~~body, a volunteer firefighter may commence a proceeding in~~
6 ~~accordance with Section 1094.5 of the Code of Civil Procedure~~
7 ~~to set aside the decision of the governing body on the ground that~~
8 ~~the decision is not supported by substantial evidence. The court~~
9 ~~shall not employ its independent judgment in reviewing the~~
10 ~~evidence. The proceeding shall be commenced within 90 days~~
11 ~~from the date that the governing body renders its decision. This~~
12 ~~remedy shall be the exclusive method for review of the~~
13 ~~governing body's decision.~~